

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CALESTARD L. GRAVETT and GENERAL SERVICES
ADMINISTRATION, Washington, DC

*Docket No. 00-75; Submitted on the Record;
Issued March 7, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective January 11, 1999; and (2) whether the Office properly denied appellant's February 9, 1999 request for reconsideration.

On September 18, 1987 appellant, then a 36-year-old carpenter, filed a claim asserting that she injured both her arms and wrists while in the performance of her duties. The Office accepted her claim for an aggravation of bilateral carpal tunnel syndrome and approved multiple surgeries. Appellant received compensation for temporary total disability.

Appellant's attending physician, Dr. Charles H. Emich, a Board-certified orthopedic surgeon, continued to report that appellant remained totally disabled for work by her carpal tunnel syndrome. On August 12, 1998 he reported that it had been almost two years since appellant worked and that her condition was essentially unchanged.

A year earlier, on June 24, 1997, Dr. Jeffrey L. Lovallo, an orthopedist and Office referral physician, reported that appellant had no objective findings of residual disease and recommended that she return progressively to full duty.

To resolve the conflict between appellant's attending physician and the Office referral physician, the Office referred appellant, together with the medical record and a statement of accepted facts, to a referee medical specialist, Dr. Joseph D. Linehan. On November 20, 1998 Dr. Linehan, a Board-certified orthopedic surgeon, related appellant's history. He noted that appellant had undergone three carpal tunnel releases on the left wrist and four carpal tunnel releases on the right. She also had two operations of an ulnar collateral ligament injury to her right thumb. Dr. Linehan described appellant's complaints, medical course and findings on examination. He stated, as follows:

“Her latest electrodiagnostic studies of November 19, 1997 show no residual findings of a compressive neuropathy of the median nerve bilaterally. The nerve

conduction velocities are normal, amplitudes normal, EMGs [electromyograms] are normal. So, there is no permanent nerve damage. In my opinion she can certainly return to work as a Building Manager Specialist. I entirely agree with Dr. Lovallo's opinion. The basis for this conclusion is that she has subjective complaints without objective findings. So, the affirmative findings are that they are all normal. Specifically, her electrodiagnostic studies also failed to show any changes consistent with a diabetic neuropathy. In my opinion she is able to do her normal duty assignment without restrictions. I do not recommend further treatment at this time and certainly she would not benefit from any further surgery."

On December 10, 1998 the Office issued a notice of proposed termination of medical benefits and disability compensation. The Office found that the weight of the medical evidence rested with the opinion of the referee medical specialist and established that appellant no longer required medical care and could return to her date-of-injury position.

In a decision dated January 11, 1999, the Office finalized the termination of appellant's compensation benefits effective that date.¹

Appellant requested reconsideration. In support she submitted copies of documents that were already a part of the record. She also submitted medical reports that indicated a reflex sympathetic dystrophy as the likely diagnosis in her case.

In a decision dated May 27, 1999, the Office denied a merit review of appellant's claim on the grounds that the evidence submitted in support of her request for reconsideration was cumulative, repetitious or immaterial.

The Board finds that the Office met its burden of proof to justify the termination of appellant's compensation benefits effective January 11, 1999.

Once the Office accepts a claim it has the burden of proof to justify the termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³

A conflict in medical opinion arose in this case between appellant's attending physician, Dr. Emich, and the Office referral physician, Dr. Lovallo, on whether appellant continued to be disabled for work as a result of her employment-related carpal tunnel syndrome. The Office therefore referred appellant to a referee medical specialist.

¹ The notice gave January 11, 1998 as the effective date, which is a typographical error.

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

When there exist opposing medical reports of virtually equal weight and rationale, and the case is referred to a referee medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁴

Dr. Linehan, the referee medical specialist, determined that there were no permanent residuals and that appellant could return to full duty. The Office provided him with the medical record and a statement of accepted facts. Dr. Linehan examined appellant and based his opinion on a proper factual background. He supported his opinion with medical reasoning to show that his conclusion was sound, rational and logical. He discussed appellant's latest electrodiagnostic studies which showed no residual findings of a compressive neuropathy of the median nerve bilaterally. The nerve conduction velocities were normal, as were the amplitudes and EMGs. The affirmative findings were all normal; appellant had subjective complaints without objective findings.

The Board finds that the opinion of Dr. Linehan is well reasoned and must be accorded special weight in resolving the outstanding conflict in this case. As the weight of the evidence supports that the accepted bilateral carpal tunnel syndrome had ceased, together with its attendant disability, the Board will affirm the termination of appellant's compensation benefits.

The Board also finds that the Office properly denied appellant's February 9, 1999 request for reconsideration.

Section 10.606(b) of the Code of Federal Regulations⁵ provides that an application for reconsideration, including all supporting documents, must: (1) be submitted in writing and (2) set forth arguments and contain evidence that either; (i) shows that the Office erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that, where the request is timely⁶ but fails to meet at least one of the standards described in section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.⁷

To support her February 9, 1999 request for reconsideration, appellant did not set forth arguments or submit evidence that showed that the Office erroneously applied or interpreted a specific point of law, that advanced a relevant legal argument not previously considered by the Office or that constitutes relevant and pertinent new evidence not previously considered by the Office. The new evidence she did submit failed to support that she continued to suffer from her employment-related bilateral carpal tunnel syndrome. This evidence tended instead to support

⁴ *Carl Epstein*, 38 ECAB 539 (1987); *James P. Roberts*, 31 ECAB 1010 (1980).

⁵ 20 C.F.R. § 10.606(b).

⁶ An application for reconsideration must be sent within one year of the date of the Office decision for which review is sought. *Id.* § 10.607(a).

⁷ *Id.* § 608(b).

that a reflex sympathetic dystrophy was the likely diagnosis in her case. Because the record does not yet establish that such a dystrophy is causally related to her federal employment, appellant bears the burden of proof to establish that she sustained such an injury while in the performance of her duties. The Office's burden to justify the termination of compensation benefits related solely to the accepted condition of bilateral carpal tunnel syndrome. Evidence tending to support the existence of a different medical condition must therefore be regarded as immaterial or irrelevant to the Office's January 11, 1999 decision. The Board will affirm the denial of appellant's request for reconsideration.⁸

The May 27 and January 11, 1999 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
March 7, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁸ The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). The Board therefore has no jurisdiction to review new evidence submitted by appellant for the first time on appeal.